APPEAL NO. 031522
FILED AUGUST 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 21, 2003. The hearing officer resolved the sole disputed issue by deciding that the respondent's (claimant) compensable injury of _____, includes a compression fracture of the right femoral head. The appellant (self-insured) appealed the hearing officer's determination and argues that the hearing officer committed harmful error in admitting Claimant's Exhibit Nos. 1 and 4. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The self-insured asserts that the hearing officer committed harmful error in admitting Claimant's Exhibit Nos. 1 and 4. The self-insured objected to this admission at the CCH on the grounds that the documents had not been timely exchanged. Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The claimant argued that the documents were exchanged as they became available. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). It was a factual issue for the hearing officer to determine whether or not the documents were in fact timely exchanged, and, if not, if there was good cause for such failure. The hearing officer determined that the claimant had good cause for failing to timely exchange the medical documents, and that the claimant exchanged the medical documents as soon as they became available. We do not find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles. Nor did the self-insured establish that the evidentiary error it asserts probably caused the rendition of an improper judgment.

The issue of extent of injury is a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer considered the evidence and he determined that the claimant's compensable injury of _____, includes a compression fracture of the right femoral head. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Also, the self-insured argues that the hearing officer erred in making a finding of fact regarding medical necessity and that the hearing officer does not have jurisdiction to rule on this issue. The hearing officer's Finding of Fact No. 9 states: "[t]he injury of _____ aggravated Claimant's underlying condition of osteoarthritis, caused it to become worse, and accelerated the need for total hip replacement surgery." A review of a medical report in evidence reflects that the hearing officer was paraphrasing the medical report by Dr. E dated November 27, 2002, in that Dr. E opined that the claimant's degenerative condition worsened as a direct result of the alleged injury, and that if her symptoms become severe "she is going to need reconstruction in the near future." The evidence supports the hearing officer's finding, and we conclude that the hearing officer did not make a finding regarding medical necessity.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **a governmental entity that self-insures, either individually, or collectively through the TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

DA
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Edward Vilano
Appeals Judge